

Legislative Analysis



INCREASED PROTECTIONS FOR INDIVIDUALS WITH GUARDIAN OR CONSERVATOR

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5192

Sponsor: Rep. Larry DeShazor

House Bill 6272

Sponsor: Rep. Jon Switalski

Committee: Judiciary

Complete to 7-19-10

A SUMMARY OF HOUSE BILL 5192 INTRODUCED 7-14-09 AND HOUSE BILL 6272 AS INTRODUCED 6-17-10

House Bills 5192 and 6272 as a package would amend several sections of the Estates and Protected Individuals Code (EPIC) to prohibit a conservator from selling, mortgaging, or disposing of the protected individual's property without court approval and require, with certain exceptions, a conservator to furnish a bond.

The Estates and Protected Individuals Code establishes the rules for when a guardian may be appointed to take care of an individual and when a conservator may be appointed to take care of an individual's financial affairs. A person can have both a guardian and a conservator appointed on his or her behalf. Generally speaking, a guardian is appointed when a finding is made by a court that a person is legally incapacitated—that is, unable to make informed decisions about his or her own care and custody. During the process to determine if an individual is legally incapacitated, a guardian ad litem is appointed to represent the best interests of the individual in question if he or she does not already have legal counsel of his or her own choosing. A person who has had a guardian assigned to care for him or her is referred to as a "ward" and a person who has had a conservator appointed to take care of his or her money or property is referred to as a "protected individual." The bills would put in place additional protections to protect certain assets of "wards" and "protected individuals" from misuse or fraud by guardians and conservators. The bills are reintroductions, having been introduced during the last legislative session.

House Bill 5192 is tie-barred to House Bills 4619 (previously reported) and 5194 (a bill virtually identical to House Bill 6272). House Bill 6272 is also tie-barred to House Bill 4619 as well as to House Bill 5192. Consequently, the bills could not go into effect unless the bills to which they are tie-barred are also enacted into law. Note: House Bill 4619, previously reported by the Senior Health, Security, and Retirement Committee, has passed the House. That bill would amend EPIC to require a guardian ad litem to ask about the amount of assets considered as "liquid assets" belonging to a protected individual and include an estimate of the amount in his or her report to the court, as well

as grant a court discretion under certain circumstances to order the guardian to petition for appointment of a conservator.

House Bill 6272

The bill would amend EPIC (MCL 700.5422 and 700.5423) to specifically prohibit a conservator from mortgaging, pledging, or causing a lien to be placed on the protected individual's home without court approval. Currently, a conservator must obtain approval from the court in order to sell or otherwise dispose of the protected individual's real property (in general, land and buildings or fixtures on the land) or interest in real property. A sale or other disposal of real property or an interest in real property can only be approved if, after a hearing with notice to interested persons and consideration of evidence of the value of the property, the court determines the sale or disposal of the real property is in the protected individual's best interest. Under the bill, these provisions would also extend to a conservator's ability to mortgage, pledge, or cause a lien to be placed on the protected individual's real property or interest in real property.

A conservator would be required to record an order allowing the sale, disposal, mortgage, or pledge or placement of a lien on real property in the records of the register of deeds for the county in which the real property is located. Unless the order had been recorded or a person to whom an interest in the property was transferred had been given a copy of the order, the person would not be entitled to presume that the conservator had the power to make the transaction.

House Bill 5192

The bill would amend EPIC (MCL 700.5410) to require a conservator to furnish a bond if the estate in question exceeded the small estate threshold. Specifically, a court would have to require the conservator, with some exceptions, to furnish a bond if the court determined that the value of cash and property readily convertible into cash in the estate and in the conservator's control exceeded the small estate threshold for administering a decedent's estate, adjusted under Section 1210 for the year in which the conservator was appointed. This requirement would not apply if one or more of the following applied:

- The estate contained no property readily convertible to cash and the cash was in a restricted account with a financial institution.
- The conservator had been granted trust powers under Section 1401 of the Banking Code.
- The court determined that requiring a bond would impose a financial hardship on the estate.
- The court stated on the record the reasons why a bond was not necessary.

FISCAL IMPACT:

These bills would have a minimal fiscal impact on the judiciary system. The bills' new requirements may cause an increase in administrative workload for some courts, depending upon the number of relevant cases they handle.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk

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